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Application No.: 09/716,740

Inventor(s): Peter Worthington Hamilton, et al.

Filed: November 20, 2000

Docket No.: 5922R2C3

Confirmation No.: 8924

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 09/716,740
Inventor(s) : Peter Worthington Hamilton
Filed : November 20, 2000
Art Unit : 1771
Examiner : Victor S. Chang
Docket No. : 5922R2C3
Confirmation No. : 8924
Customer No. : 27752
Title : Improved Storage Wrap Material

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

This Brief is filed pursuant to the appeal from the decision communicated in the Office Action mailed on June 27, 2006.

A timely Notice of Appeal was filed on September 25, 2006.

REAL PARTY IN INTEREST

The real party in interest is The Procter & Gamble Company of Cincinnati, Ohio.

RELATED APPEALS AND INTERFERENCES

Related application serial number 10/701,039, filed November 4, 2003 is currently under appeal. No decision has yet been rendered.

STATUS OF CLAIMS

Claims 1-15, 17, 18, 38-52, 54, 55, 75, 80, 81, 86-102 stand rejected in the present application. Claims 16, 19-37, 53, 56-74, 76-79, and 82-25 are canceled.

Claims 1-15, 17, 18, 38-52, 54, 55, 75, 80, 81, 86-102 are appealed.

A complete copy of the appealed claims is set forth in the Claims Appendix attached herein.

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STATUS OF AMENDMENTS

No amendment was filed.

SUMMARY OF CLAIMED SUBJECT MATTER

Claims 38 and 86 are independent.

Claim 38 provides a storage wrap material. The material comprises a sheet of non-porous material having a first side and a second side. The sheet of material has a gauge in the range from about 0.0001 inches to about 0.002 inches. The first side comprises an active side exhibiting an adhesion peel force after activation by a user that is greater than an adhesion peel force exhibited prior to activation by a user. The active side further comprises a plurality of three dimensional non-adherent protrusions extending outwardly from the sheet of material and a pressure-sensitive adhesive surrounding the non-adherent protrusions. The adhesive has a thickness less than the height of the non-adherent protrusions before activation. The active side is capable of forming a continuous seal. The sheet of material is linerless, in that activation of the active side requires no removal of components of the sheet of material. The sheet of material is sufficiently flexible to conform readily to a desired surface and has sufficiently small resiliency that it does not exert undue restorative forces that would tend to cause the sheet of material to break contact with the desired surface. See the Specification at page 7, lines 1-3; page 8, lines 13-23; page 9, line 28-page 10, line 9; page 25, line 35-36; page 27, lines 17-20; page 35, line 2; and figures 2-4, items 10, 12, 14 and 16.

Claim 86 provides a storage wrap material comprising a sheet of non-porous material which has a first side and a second side. The sheet of material has a gauge in the range of about 0.0001 inches to about 0.002 inches. The first side comprises an active side exhibiting an adhesion peel force after activation by a user that is greater than an adhesion peel force exhibited prior to activation by a user. The active side further comprises a plurality of three dimensional non-adherent protrusions extending outwardly from the sheet of material and a pressure-sensitive adhesive surrounding the non-adherent protrusions. The adhesive has a thickness less than the height of the non-adherent

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protrusions before activation. The active side is capable of forming a continuous seal. The sheet of material is sufficiently flexible to conform readily to a desired surface and has sufficiently small resiliency that it does not exert undue restorative forces that would tend to cause said sheet of material to break contact with such a desired surface. See the Specification at page 8, lines 13-23; page 9, line 28-page 10, line 9; page 25, line 35-36; page 27, lines 17-20; page 35, line 2; and figures 2-4, items 10, 12, 14 and 16.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

1. Rejection Under 35 USC §103(a) Over Wilbur (US 2,338,749) in view of Sanders (US 5,344,693)

All remaining claims have been rejected under 35 USC §103(a) as being unpatentable over Wilbur (US 2,338,749) in view of Sanders (US 5,344,693) and the admitted prior art.

ARGUMENTS

To establish a *prima facie* case of obviousness under 35 U.S.C. §103(a), three basic criteria must be met. First, the prior art reference (or references when combined) must teach or suggest all the claim limitations. Second, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine reference teachings. Third, there must be a reasonable expectation of success of obtaining the claimed invention based upon the references relied upon by the Examiner. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

The Examiner has failed to establish any of the criteria of a *prima facie* case of obviousness under 35 USC §103(a). The Examiner posits that adding Appellant's mention of cling films to the combination of Wilbur and Sanders satisfies the first requirement of teaching all the claimed limitations. Appellant submits that nowhere in the specification is

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any mention made of a cling film having a gauge in the claimed range. The Examiner has chosen to assume such a gauge for a cling film and to impose this assumption as fact upon the combined teachings of the stated combination of references. Appellant submits that such an imposed assumption of the presence of a limitation in cited references is improper and does not satisfy the requirements for a *prima facie* case of obviousness. Each of the claimed limitations is not taught or suggested by the combination of cited references.

The Examiner provides that combining the conformability of a cling wrap with the features of Sanders and Wilbur would be motivated by a desire to obtain a conformable wrapper to fully enclose a container. Appellant submits that nothing in either the Wilbur or Sanders reference suggests that the disclosed structures would benefit from the addition of a high degree of conformability together with a low resiliency. The motivation to add this feature to the combination of Wilbur and Sanders appears to come solely from Appellant's claimed invention.

The Examiner provides the admitted existence of conformable cling films creates a reasonable expectation of success in combining such films with the structures of Sanders and Wilbur. Appellant submits that there is no basis in the combination of references for the assumption that a highly conformable monolayer cling film of unstated gauge can successfully formed into the three dimensional structure illustrated in figure 4 of the Sanders reference, further combined with the teachings of the Wilbur reference regarding the addition of a layer of adhesive and yet retain sufficient conformability while not acquiring resiliency to the point of failing to satisfy the claimed limitations. The structures of Sanders and Wilbur are not described as satisfying the claimed limitations yet the Examiner posits that the imposition of these structures on a cling film by mechanically modifying the structure of the film will have no effect upon the mechanical properties of the modified film. Appellant submits that there is no factual support for this assumption that the references may be so combined without any impact upon the conformability or resiliency of the base film which has by way of the Examiner, been modified from a planar structure to a three dimensional structure and has also been modified from a monolayer structure to a laminate structure. The position of the

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Examiner appears to be that laminates perform mechanically in a manner identical to monolayer structures, and that planar structures are the mechanical equivalent of more complex three dimensional structures. Appellant submits that an insufficient basis for proclaiming that a reasonable expectation of success exists for making the cited combination has been provided.

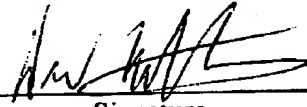
The Examiner has failed to set forth a combination of references which teaches or suggests each of the limitations of the invention as claimed by failing to teach or suggest the claimed gauge of the material. The Examiner has failed to provide a motivation other than Appellant's claims for combining the references. The Examiner has failed to support the idea that there is a reasonable expectation of success in making the combination of references. None of the three criteria necessary to establish a *prima facie* case of obviousness has been satisfied.

SUMMARY

In view of all of the above, it is respectfully submitted that as a *prima facie* case of obviousness under 35 USC §103(a) has not been properly established, the rejection of the claims should be overturned.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY



Signature

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CLAIMS APPENDIX

1. (Rejected) A storage wrap material according to Claim 75, wherein the adhesion peel force after activation by a user is sufficient to form a continuous seal against a target surface.
2. (Rejected) The storage wrap of Claim 1, wherein said active side is activatable by an externally applied force exerted upon said sheet of material.
3. (Rejected) The storage wrap of Claim 2, wherein said active side is activatable by a compressive force.
4. (Rejected) The storage wrap of Claim 3, wherein said compressive force is required to be at least about 0.1 psi to activate said active side.
5. (Rejected) The storage wrap of Claim 3, wherein said compressive force is exerted in a direction substantially normal to said sheet of material.
6. (Rejected) The storage wrap of Claim 2, wherein said active side is activatable by a tensile force.
7. (Rejected) The storage wrap of Claim 6, wherein said tensile force is required to be at least about 0.80 pounds per inch of strip width to activate said active side.
8. (Rejected) The storage wrap of Claim 6, wherein said tensile force is exerted in a direction substantially parallel to said sheet of material.
9. (Rejected) The storage wrap material of Claim 1, wherein said active side exhibits an adhesion peel force of at least about 1 ounce per inch width after activation by a user.
10. (Rejected) The storage wrap material of Claim 1, wherein said active side may be selectively activated in discrete regions by a user.

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11. (Rejected) The storage wrap material of Claim 1, wherein said adhesion peel force after activation is sufficient to form a barrier seal against a target surface, said seal exhibiting barrier properties at least as great as those of said sheet of material.

12. (Rejected) The storage wrap material of Claim 1, wherein both said first side and said second side comprise active sides of said material.

13. (Rejected) The storage wrap material of Claim 1, wherein said active side when activated forms a bond with a target surface, said bond being selected from one or more of the group consisting of: a permanent bond, a refastenable bond, a resealable bond and a releasable bond.

14.(Rejected) The storage wrap material of Claim 1, wherein said sheet of material comprises a polymeric film material.

15. (Rejected) The storage wrap material of Claim 14, wherein said polymeric film material is selected from the group consisting of: a substantially translucent polymeric film material and a substantially transparent polymeric film material.

16. (Cancelled)

17. (Rejected) The storage wrap material of Claim 1, wherein said sheet of material is clingless and exhibits no adhesion peel force prior to activation by a user.

18. (Rejected) The storage wrap of Claim 1, wherein the pressure sensitive adhesive has a thickness in the range from about 0.0005 inches to about 0.002 inches.

Claims 19-37 (Canceled)

38. (Rejected) A storage wrap material comprising: a sheet of non-porous material having a first side and a second side, said sheet of material having a gauge in the range from about 0.0001 inches to about 0.002 inches, said first side comprising an active side exhibiting an adhesion peel force after activation by a user that is greater than an adhesion peel force exhibited prior to activation by a user, said active side further comprising a

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plurality of three dimensional non-adherent protrusions extending outwardly from said sheet of material and a pressure-sensitive adhesive surrounding said non-adherent protrusions, said adhesive having a thickness less than the height of said non-adherent protrusions before activation, said active side being capable of forming a continuous seal, wherein said sheet of material is linerless, such that activation of said active side requires no removal of components of said sheet of material, said sheet of material being sufficiently flexible to conform readily to a desired surface and having sufficiently small resiliency that it does not exert undue restorative forces that would tend to cause said sheet of material to break contact with such a desired surface.

39. (Rejected) The storage wrap of Claim 38, wherein said active side is activatable by an externally applied force exerted upon said sheet of material.

40. (Rejected) The storage wrap of Claim 39, wherein said active side is activatable by a compressive force.

41. (Original) The storage wrap of Claim 40, wherein said compressive force is required to be at least about 0.1 psi to activate said active side.

42. (Rejected) The storage wrap of Claim 40, wherein said compressive force is exerted in a direction substantially normal to said sheet of material.

43. (Rejected) The storage wrap of Claim 39, wherein said active side is activatable by a tensile force.

44. (Rejected) The storage wrap of Claim 43, wherein said tensile force is required to be at least about 0.80 pounds per inch of strip width to activate said active side.

45. (Rejected) The storage wrap of Claim 43, wherein said tensile force is exerted in a direction substantially parallel to said sheet of material.

46. (Rejected) The storage wrap material of Claim 38, wherein said active side exhibits an adhesion peel force of at least about 1 ounce per inch width after activation by a user.

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47. (Rejected) The storage wrap material of Claim 38, wherein said active side may be selectively activated in discrete regions by a user.

48. (Rejected) The storage wrap material of Claim 38, wherein said adhesion peel force after activation is sufficient to form a barrier seal against a target surface, said seal exhibiting barrier properties at least as great as those of said sheet of material.

49. (Rejected) The storage wrap material of Claim 38, wherein both said first side and said second side comprise active sides of said material.

50. (Rejected) The storage wrap material of Claim 38, wherein said active side when activated forms a bond with a target surface, said bond being selected from one or more of the group consisting of: a discontinuous bond, a permanent bond, a refastenable bond, a resealable bond and a releasable bond.

51. (Rejected) The storage wrap material of Claim 38, wherein said sheet of material comprises a polymeric film material.

52. (Rejected) The storage wrap material of Claim 51, wherein said polymeric film material is selected from the group consisting of: a substantially translucent polymeric film material and a substantially transparent polymeric film material.

53. (Cancelled)

54. (Rejected) The storage wrap material of Claim 38, wherein said sheet of material is clingless and exhibits no adhesion peel force prior to activation by a user.

55. (Rejected) The storage wrap of Claim 38, wherein the pressure sensitive adhesive has a thickness in the range from about 0.0005 inches to about 0.002 inches.

Claims 56-74 (Canceled)

75. (Rejected) A storage wrap material according to Claim 38, wherein the adhesion peel force after activation by a user is sufficient to form a seal against a target surface.

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Claims 76-79 (Canceled)

80. (Rejected) A storage wrap material according to Claim 75, wherein the sheet of material has sufficiently small resiliency that it does not exert undue restorative forces that would tend to cause the seal to fail.

81. (Rejected) A storage wrap material according to Claim 80 wherein the sheet has sufficiently small resiliency that it does not exert undue restorative forces which would tend to cause the seal to fail such that preservation of perishable items is no longer ensured.

Claims 82-85 (Canceled)

86. (Rejected) A storage wrap material comprising a sheet of non-porous material having a first side and a second side, said sheet of material having a gauge in the range of about 0.0001 inches to about 0.002 inches, said first side comprising an active side exhibiting an adhesion peel force after activation by a user that is greater than an adhesion peel force exhibited prior to activation by a user, said active side further comprising a plurality of three dimensional non-adherent protrusions extending outwardly from said sheet of material and a pressure-sensitive adhesive surrounding said non-adherent protrusions, said adhesive having a thickness less than the height of said non-adherent protrusions before activation, said active side being capable of forming a continuous seal, said sheet of material being sufficiently flexible to conform readily to a desired surface and having sufficiently small resiliency that it does not exert undue restorative forces that would tend to cause said sheet of material to break contact with such a desired surface.

87. (Rejected) The storage wrap of Claim 86, wherein said active side is activatable by an externally applied force exerted upon said sheet of material, said externally applied force being selected from one or more of the group consisting of: a compressive force and a tensile force.

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88. (Rejected) The storage wrap material of Claim 86, wherein said active side exhibits an adhesion peel force of at least about 1 ounce per inch width after activation by a user.

89. (Rejected) The storage wrap material of Claim 86, wherein said active side may be selectively activated in discrete regions by a user.

90. (Rejected) The storage wrap material of Claim 86, wherein said active side may be activated by compression against a target surface.

91. (Rejected) The storage wrap material of Claim 86, wherein said adhesion peel force after activation is sufficient to form a barrier seal against a target surface, said seal exhibiting barrier properties at least as great as those of said sheet of material.

92. (Rejected) The storage wrap material of Claim 86, wherein both said first side and said second side comprise active sides of said material.

93. (Rejected) A storage wrap material according to Claim 86, wherein the adhesion peel force after activation by a user is sufficient to form a seal against a target surface.

94. (Rejected) A storage wrap material according to Claim 93, wherein a compressive force of at least 0.1 psi is required to activate said active side, said sheet of material is sufficiently flexible to conform readily to any desired surface and has sufficiently small resiliency that it does not exert undue restorative forces which would tend to cause the seal to fail.

95. (Rejected) A storage wrap material according to Claim 94 wherein the sheet has sufficiently small resiliency that it does not exert undue restorative forces which would tend to cause the seal to fail such that preservation of perishable items is no longer ensured.

96. (Rejected) A storage wrap material according to Claim 93, wherein the adhesion peel force after activation by a user is sufficient to form a continuous seal against a target surface.

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97. (Rejected) The storage wrap of Claim 96, wherein said active side is activatable by an externally applied force exerted upon said sheet of material, said externally applied force being selected from one or more of the group consisting of: a compressive force and a tensile force.

98. (Rejected) The storage wrap material of Claim 96, wherein said active side exhibits an adhesion peel force of at least about 1 ounce per inch width after activation by a user.

99. (Rejected) The storage wrap material of Claim 96, wherein said active side may be selectively activated in discrete regions by a user.

100. (Rejected) The storage wrap material of Claim 96, wherein said active side may be activated by compression against a target surface.

101. (Rejected) The storage wrap material of Claim 96, wherein said adhesion peel force after activation is sufficient to form a barrier seal against a target surface, said seal exhibiting barrier properties at least as great as those of said sheet of material.

102. (Rejected) The storage wrap material of Claim 96, wherein both said first side and said second side comprise active sides of said material.

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EVIDENCE APPENDIX

None

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RELATED PROCEEDINGS APPENDIX

None

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